

FILED  
CLERK, U.S. DISTRICT COURT  
28 MAR 01 AM 8:48

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

BY: DEBRA J. GILKIN

MK GOLD COMPANY, a Delaware  
corporation,

Plaintiff,

vs.

MORRISON KNUDSEN CORPORATION,  
a Delaware corporation

Defendant.

ORDER DENYING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

Case No. 2:96cv0935 ST

LEUCADIA NATIONAL CORPORATION,  
a New York corporation,

Plaintiff,

vs.

MORRISON KNUDSEN CORPORATION,  
a Delaware corporation,

Defendant.

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Before the Court is Defendant's motion for partial summary judgment on the issue of whether Defendant breached a non-compete agreement with Plaintiff MK Gold Company by pursuing the San Cristobal mining project. Oral argument on the motion was heard on Wednesday, March 21, 2001. The Court, having reviewed the memoranda submitted by the parties, the relevant law, and the arguments set forth by the parties, and being fully advised, hereby enters the following order:

1. Summary judgment is appropriate where "there is no genuine issue as to any material fact." Fed. R. Civ. Proc. 56. A dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Dreiling v. Peugeot Motors of America, Inc., 850 F.2d 1373, 1377 (10th Cir. 1988) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). In making the decision, the trial judge must consider all the evidence in the light most favorable to the nonmoving party, and should not weigh the evidence to determine the truth of the matter, but instead must ask "whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented." Id. (quotations omitted).
2. The controlling contractual provision for purposes of Defendant's motion is set forth in section 2.2 of the non-compete agreement, which provides in relevant part:  
  
2.2 Exceptions. Morrison Knudsen and its Affiliates shall not be precluded by this Agreement from . . . (f) engaging in any activity with respect to any mine or project that, based upon (i) the reasonable belief of Morrison Knudsen after due inquiry and (ii) a written report of an independent

professional expert in mining or geology, is expected over the life of the mine or project not to be primarily engaged in the mining of or not primarily result in the production of Precious Metals.

3. The Court finds that there is a genuine issue of material fact about whether Defendant conducted a "due inquiry" and based its decision to pursue the San Cristobal project on a "reasonable belief" that the project was not expected to be primarily engaged in the mining of, or primarily result in the production of, precious metals. Accordingly, Defendant's motion for summary judgment is DENIED.

SO ORDERED.

DATED this 28<sup>th</sup> day of March, 2001.

BY THE COURT:

  
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TED STEWART  
United States District Judge

tsi

United States District Court  
for the  
District of Utah  
March 28, 2001

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:96-cv-00935

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